U.S. Department of Labor

Office of Administrative Law Judges
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Issue date: 26Feb2002

Case No: 1999-BLA-01140

BRB No.: 00-0915 BLA

In the Matter of

GLENN O. MORGAN,

Claimant

v.

LODESTAR ENERGY, INC.,

Employer,

and

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS,

Party-in-Interest.

APPEARANCES:

John Sowards, Jr., Esquire
For the claimant

Richard Joiner, Esquire
For the employer/carrier

BEFORE: JOSEPH E. KANE
Administrative Law Judge

DECISION AND ORDER ON REMAND — AWARDING BENEFITS

This proceeding arises from a claim for benefits under Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. § 901 *et seq.* (the Act). Benefits are awarded to coal miners who are totally disabled due to pneumoconiosis. Surviving dependents of coal miners whose deaths were caused by pneumoconiosis may also recover benefits. Pneumoconiosis, commonly known as black lung, is a chronic dust disease of the lungs arising from coal mine employment. 20 C.F.R. § 718.201(a) (2001).

On June 28, 2001, this case was remanded to the Office of Administrative Law Judges for further consideration. The Findings of Fact and Conclusions of Law that follow are based upon my analysis of the entire record, arguments of the parties, and the applicable regulations, statutes, and case law. Although perhaps not specifically mentioned in this decision, each exhibit and argument of the parties has been carefully reviewed and thoughtfully considered. While the contents of certain medical evidence may appear inconsistent with the conclusions reached herein, the appraisal of such evidence has been conducted in conformance with the quality standards of the regulations.

The Act's implementing regulations are located in Title 20 of the Code of Federal Regulations, and section numbers cited in this decision exclusively pertain to that title. References to DX, CX, and EX refer to the exhibits of the Director, claimant, and employer, respectively. The transcript of the hearing is cited as "Tr." and by page number.

ISSUES

The Benefits Review Board remanded the prior administrative law judge's decision to deny benefits in order for Dr. Younes's opinion to be considered and for the opinions of Drs. Simpao, Broudy, Houser, and Powell to be reconsidered. The prior decision concluded that the claimant demonstrated the presence of pneumoconiosis and total disability but failed to prove that the total disability was "because of pneumoconiosis." Thus, the sole legal issue before me is whether the evaluation and reevaluation of the medical opinions of record supports the conclusion that the claimant's total disability is "because of pneumoconiosis."[1]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Factual Background and Procedural History

The claimant, Glenn O. Morgan, was born on May 22, 1954. Mr. Morgan married Janet Kay Laffoon on May 27, 1972. Claimant resided with his wife until his death on November 11, 2001. On his application for benefits, claimant alleged that he has one dependent child, Jason Allen Morgan. Claimant's son graduated from high school in 1999,

[1]The Benefits Review Board affirmed, as unchallenged, the administrative law judge's determinations regarding the length of coal mine employment, the presence of pneumoconiosis, and the presence of total disability. Accordingly, I shall not address these issues.

thus, from the time he filed the instant claim until May 1999, Mr. Morgan had two dependents – his wife and son. (DX 1).

The claimant suffered from shortness of breath from the mid-1980s to his death. His primary physician was Dr. Myers, although he also treated with Dr. Buchanan for diabetes. (Tr. 21). The claimant testified that his condition worsened after 1995, and that he could not breathe well enough to walk more than 25-30 feet. (Tr. 22). Mr. Morgan admitted that he began smoking when he was 18 or 19 years of age at a rate of about half a pack of cigarettes a day. He continued to smoke for 19 to 20 years. (Tr. 23). In 1993 or 1994, he cut down to no more than four cigarettes a day. (Tr. 23-24). He quit smoking for a year at one time, but he determined it did not improve his respiratory condition. (Tr. 24).

Mr. Morgan filed his claim on April 28, 1998. (DX 1). It was initially denied by a Department of Labor claims examiner on August 31, 1998 and again on November 12, 1998. (DX 15, 16). Mr. Morgan requested a formal hearing on November 19, 1998. (DX 18). The district director issued a Proposed Decision and Order Memorandum of Conference, allowing benefits, on May 17, 1999. (DX 53). The employer requested a formal hearing on June 9, 1999. (DX 54). The claim was referred to the Office of Administrative Law Judges on July 21, 1999. (DX 57). On May 19, 2000, an administrative law judge denied the claimant benefits, but the denial was subsequently vacated on appeal to the BRB by the employer in a June 28, 2001 decision. Subsequently, the case was remanded to this court for further examination of certain issues and factual determinations in the record.

Medical Evidence[2]

Dr. Younes, board-certified in pulmonary medicine, opined that the claimant was totally disabled in an April 5, 1999 report. (DX 49). The doctor concluded that the primary factor causing the claimant's respiratory impairment and subsequent total disability was smoking; however, Dr. Younes stated that the claimant's coal mine employment was a "significant factor" in both his respiratory impairment and his resulting total disability. The doctor opined that the claimant lacked the respiratory ability to return to his previous coal mine employment or comparable work in a dust-free environment.

Dr. William C. Houser examined Mr. Morgan on August 9, 1995, and again on October 19, 1998. (DX 29, 40). At both examinations, he conducted a physical examination, chest x-ray, and pulmonary function study. Dr. Houser also considered a medical history and a history of working 19 years as a surface miner, lastly as a blast superintendent. He also noted a history of smoking one-half pack of cigarettes for

[2] I summarize only the medical evidence relevant to the questions presented by the BRB on remand. As the sole legal issue is whether the evidence of record demonstrates total disability due to pneumoconiosis, the only relevant evidence is the narrative medical opinions found in the record.

approximately 20 years, and complaints of shortness of breath, a productive cough and some wheezing. Based on his examination and test results, Dr. Houser diagnosed coal workers' pneumoconiosis, chronic obstructive pulmonary disease, and bronchial asthma. He made the same diagnoses in 1998, but also found acute respiratory failure with arterial hypoxemia. He opined during his 1995 examination that the miner did have an occupational lung disease caused by his coal mine employment. He concluded that, from a pulmonary standpoint, the miner was physically able to do his usual coal mine employment or comparable and gainful work in a dust-free environment. However, Dr. Houser stated in his more recent 1998 examination that the miner had 100% impairment due to his occupational disease and was no longer able to perform even sedentary work. Based on his most recent examination and test results, he concluded that the claimant did not retain the physical capacity to return to his surface mining work and he should avoid any additional exposure to coal and rock dust, as well as other dusts, smoke and fumes.

Dr. Houser was deposed on December 16, 1998. (DX 40). He summarized his credentials and stated that he is Board-certified in internal medicine, pulmonary disease and critical care medicine. He reiterated his examination results from August 1995 and October 1998, and acknowledged that there has been a significant change in the claimant's pulmonary condition since 1995. He noted that the claimant's degree of obstruction has progressed from moderate to severe. He reaffirmed his diagnosis of pneumoconiosis due to coal dust exposure and added that the significant progression of the claimant's pulmonary impairment was due to the natural progression of his coal workers' pneumoconiosis and prior occupational dust exposure. He testified that the miner is permanently and totally disabled. Dr. Houser specifically stated that Claimant's smoking history alone would not be to cause the degree of reduction in pulmonary function suffered by the claimant.

Dr. Bruce C. Broudy examined Mr. Morgan on October 26, 1995 and again on May 28, 1998. (DX 40; DX 13). During both examinations, he conducted a physical examination, a chest x-ray, blood gas study and pulmonary function study. He also considered the miner's medical history and symptoms of wheezing, shortness of breath, and daily cough with gray colored phlegm. He also noted Mr. Morgan's 19 years of surface mining employment, mostly drilling and blasting, and a history of smoking less than one pack of cigarettes per day for 18 to 20 years until he cut down to 1/4 pack per day over the last two years. During the 1995 examination, Dr. Broudy noted that the miner's respirations were normal and the lungs were clear. However, during the 1998 examination, he noted that the lungs had diminished breath sounds throughout. In 1995, Dr.

Broudy diagnosed a history of bronchial asthma and diabetes. He did not believe Mr. Morgan had coal workers' pneumoconiosis and opined that he retained the respiratory capacity to perform the work of an underground coal miner or to do similarly arduous manual labor. He found no significant pulmonary disease or respiratory impairment which had arisen from the claimant's occupation as a coal worker. In 1998, Dr. Broudy's diagnoses expanded from moderately-severe to severe chronic obstructive airways disease with significant responsiveness to bronchodilation and diabetes mellitus. He opined that the obstructive airways disease was due to a combination of pulmonary emphysema from smoking and chronic asthmatic bronchitis. In contrast to his 1995 opinion, Dr. Broudy stated in 1998 that he did not believe the claimant retained the respiratory capacity to perform the work of an underground coal miner or to do similarly arduous manual labor because of the chronic obstructive airways disease. However, he reaffirmed his prior opinion that none of the claimant's significant pulmonary disease or respiratory impairment arose from his occupation as a coal worker. Dr. Broudy is Board-certified in internal medicine and pulmonary disease.

Dr. Broudy was deposed on January 5, 1999. (DX 40). He testified that he is a physician specializing in the practice of pulmonary medicine. He reiterated his findings from October 1995 and May 1998, and testified that there were significant changes between the two physical examinations. In 1995, the miner's lungs were clear, but there were wheezes and expiratory delay noted when Dr. Broudy examined him in 1998. He opined that this change suggested that there was airways obstruction present in 1998 which was not noticeable in 1995. Based upon his review of the test results from both 1995 and 1998, Dr. Broudy opined that the principal diagnosis of bronchial asthma and chronic obstructive pulmonary disease basically remained the same, although the severity had increased. In his opinion, the worsening of the claimant's pulmonary condition was not the result of his previous exposure to coal dust. Instead, he attributed this change in condition to the natural progression of the asthma, chronic obstructive pulmonary disease and his continued cigarette smoking, not to coal dust exposure or any occupational cause.

The claimant was examined by Dr. Betty W. Joyce on November 1, 1995. (DX 29). Dr. Joyce noted 19 years of coal mine employment, primarily as a drill operator, blaster and mechanic, and a medical history, including increased dyspnea, a daily cough and shortness of breath relieved by bronchodilator. She also noted a history of smoking one-half pack of cigarettes per day for 20 years before cutting down to 1/4 pack per day six months ago. The physician conducted a physical examination, chest x-ray, blood gas study, pulmonary function study, and EKG. Dr. Joyce diagnosed coal workers' pneumoconiosis, moderate obstructive ventilatory defect with improvement on post-bronchodilator therapy, and poorly controlled hypertension. In her opinion, the claimant's pneumoconiosis was caused by his exposure to coal dust. She felt his moderate obstructive ventilatory defect was due to tobacco abuse although she could not rule out coal dust exposure as a contributing factor. In summary, Dr. Joyce believes that the miner no longer retains the pulmonary function capacity to perform his usual coal mine employment or comparable work in a dust-free environment.

Dr. Valentino S. Simpao examined Mr. Morgan on May 14, 1998. (DX 12). He conducted a physical examination, chest x-ray, pulmonary function study, and blood gas study.
He also relied upon a smoking history of less than one pack of cigarettes a day for 20 years, quitting one week prior to the exam, and 19 years of coal mine employment as a blaster, driller, hole loader, and oiler. He noted a medical history including frequent colds, chronic bronchitis, bronchial asthma, and diabetes mellitus, and complaints of occasional chest pain with wheezing spells, a productive cough for the past year or two, and shortness of breath. Dr. Simpao diagnosed coal workers' pneumoconiosis due to multiple years of coal dust exposure. In his opinion, the claimant has severe pulmonary impairment, and he is unable to return to his previous coal mine employment or comparable work in a dust-free environment. Dr. Simpao opined that the claimant's impairment was due to pneumoconiosis.

Mr. Morgan was next examined by Dr. John E. Myers, Jr. on November 7, 1998. (DX 40). The physician noted 19 years of above ground coal mine employment, lastly as a blaster/driller. Dr. Myers conducted a physical examination, chest x-ray, pulmonary function study, and EKG. He noted the claimant was dyspneic on walking fifty feet and had a productive cough in the morning. Dr. Myers also noted a history of smoking more than a half pack of cigarettes per day for twenty years before cutting down. Dr. Myers diagnosed coal workers' pneumoconiosis, chronic obstructive pulmonary disease, diabetes mellitus, and cataracts. Within reasonable medical probability, he opined that the miner's pneumoconiosis was the result of exposure to coal dust, and any pulmonary impairment was the result of coal dust exposure.

Dr. Robert Powell examined Mr. Morgan on December 11, 1998. (DX 34). He conducted a physical examination, noting the claimant's complaints of shortness of breath, wheezing and some coughing productively. He also conducted a chest x-ray, EKG, a blood gas study, and a pulmonary function study. He also noted 19 years of coal mine employment, all above ground, performing a number of tasks, including drilling and blasting, and working as a mechanic and service man. Dr. Powell also noted a history of smoking about half a package of cigarettes per day for more than 20 years until cutting down recently, a medical history including diabetes, weight loss of the past four years, and an operation on the nose, bilateral cataracts, and a right herniography. Based on the abnormal chest x-ray, Dr. Powell diagnosed pneumoconiosis. He also diagnosed hypoxemia and severe obstructive ventilatory defect with hyperinflation, secondary to pulmonary emphysema due to the patient's tobacco abuse.

Dr. Powell was deposed on January 27, 1999. (DX 40). He stated that he is a general practitioner with board specialties in internal medicine and pulmonary disease. He is also a professor of medicine for the University of Louisville School of Medicine, in Louisville, Kentucky. He testified that he examined the miner on December 11, 1998. Based on his complete examination, considering the work history and findings on the chest x-ray,

blood gas studies, pulmonary function studies and EKG, Dr. Powell diagnosed coal workers' pneumoconiosis. He further opined that

Mr. Morgan has significant breathing impairment which was caused by emphysema. When asked if this impairment was connected to the miner's work in the coal mining industry or inhalation of coal dust, Dr. Powell answered in the negative. In his opinion, the claimant's obstructive impairment and emphysema were most likely caused by tobacco smoking.

The record contains documents from various physicians and facilities including: Trover Clinic; Regional Medical Center; Vanderbilt University Medical Center; and Dr. Bernard Buchanan. (DX 31). Dr. Michael May attended the claimant in May of 1996 at Vanderbilt University Medical Center when Mr. Morgan was admitted for insulin dependent, uncontrolled diabetes mellitus, with hyperosmolarity. The records from Trover Clinic date from 1975 to 1996 for treatment of a variety of ailments and medical conditions including: progressive constipation, severe insulin-dependent diabetes mellitus with intermittent insulin reactions, anxiety and depression, diabetic gastroparesis, sensorineural hearing loss of a mild degree, back pain, asthma,
chronic sinusitis, and tendinitis of the right leg. Dr. Buchanan treated the miner in 1995 to 1996
for diabetes mellitus, ear aches, upper respiratory infections, and insulin problems. Dr. Buchanan diagnosed diabetes mellitus, bronchial asthma and coal workers' pneumoconiosis. The Regional Medical Center records contain a one-day admission in March 1998 for exacerbation of chronic obstructive pulmonary disease. The miner was attended by Dr. Lynn Leigh, who diagnosed insulin-dependent diabetes mellitus, and chronic obstructive pulmonary disease, with components of asthma, emphysema and bronchitis.

DISCUSSION AND APPLICABLE LAW

Because Claimant filed his application for benefits after March 31, 1980, this claim shall
be adjudicated under the regulations at 20 C.F.R. Part 718. Under this part of the regulations, claimant must establish by a preponderance of the evidence that he has pneumoconiosis, that his pneumoconiosis arose from coal mine employment, that he is totally disabled, and that his total disability is due to pneumoconiosis. Failure to establish any of these elements precludes entitle-ment to benefits. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989). As noted previously, the sole remaining question in the instant case is whether the claimant's total disability is due to pneumoconiosis. 20 C.F.R. § 718.204(a). To satisfy this requirement, the United States Court of Appeals for the Sixth Circuit, under whose jurisdiction this claim arises, requires a claimant to prove that his totally disabling respiratory impairment is due "at least in part" to his pneumoconiosis. *Adams v. Director, OWCP*, 886 F.2d 818, 825 (6th Cir. 1989).

The relevant evidence to establish the etiology of the claimant's impairment is the medical opinion. The weight given to each medical opinion will be in proportion to its documented and well-reasoned conclusions. A "documented" opinion is one that sets forth the clinical findings, observations, facts and other data on which the physician based the

diagnosis. *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984).

A report may be adequately documented if it is based on items such as a physical examination, symptoms and patient's history. *See Hoffman v. B & G Construction Co.*, 8 BLR 1-65 (1985); *Hess v. Clinchfield Coal Co.*, 7 BLR 1-295 (1984); *Buffalo v. Director,* OWCP, 6 BLR 1-1164, 1-1166 (1984); *Gomola v. Manor Mining and Contracting Corp*., 2 BLR 1-130 (1979). A "reasoned" opinion is one in which the underlying documentation and data are adequate to support the physician's conclusions. *See Fields, supra*. The determination that a medical opinion is "reasoned" and "documented" is for this Court to determine. *See Clark v. Karst-Robbins Coal Co.*, 12 B.L.R. 1-149 (1989)(en banc).

In reviewing the medical opinion evidence regarding etiology, it is noteworthy that those opinions wherein the physicians did not diagnose the miner as suffering from pneumoconiosis may be accorded little probative value. In *Toler v. Eastern Assoc. Coal Co.,* 43 F.3d 109 (4th Cir. 1995), the court held that, where the administrative law judge determines that a miner suffers from pneumoconiosis or is totally disabled or both, then a medical opinion wherein the miner is determined not to suffer from pneumoconiosis or is not totally disabled "can carry little weight" in assessing the etiology of the miner's total disability "unless the ALJ can and does identify specific and persuasive reasons for concluding that the doctor's judgment on the question of disability causation does not rest upon her disagreement with the ALJ's finding as to either or both of the predicates (pneumoconiosis and total disability) in the causal chain."

Of the relevant medical opinions addressing the etiology of the claimant's impairment, Drs. Younes, Houser, Joyce, Simpao, and Myers concluded that the claimant's total disability was due, at least in part, to his pneumoconiosis, while Drs. Broudy and Powell opined that the claimant's pneumoconiosis was not a contributing factor to the impairment. After a review of the record, I find that the claimant has carried his burden of proof and demonstrated that his total disability was due, at least in part, to his pneumoconiosis for the following reasons.

I do not afford Dr. Younes's opinion full probative weight as his opinion is not well documented. The one-page opinion offers cursory answers, points to no objective medical test results, and demonstrates no criteria whatsoever upon which the doctor based his medical opinion. Accordingly, I afford it less probative weight.

I do not find Dr. Myers's opinion probative on the issue of total disability etiology as it is not well reasoned. While it is apparent that Dr. Myers submitted the claimant to a battery of objective medical evaluations and thoroughly examined the claimant, the doctor's report offers only a "Yes" when addressing whether the claimant's impairment was caused by coal dust exposure. The doctor points to no employment or health factor that leads him to such a conclusion, nor does he cite any test result or physical abnormality which prompts his medical conclusion. As his opinion is poorly reasoned, I afford it less probative weight.

In contrast, I afford Dr. Houser's opinion substantial probative weight as I find it well reasoned and documented. Dr. Houser's credentials also lead me to grant his opinion more probative weight. *Burns v. Director, OWCP*, 7 B.L.R. 1-597 (1984)(holding the qualifications of the physicians are relevant in assessing the respective probative values to which their opinions are entitled). Furthermore, as Dr. Houser was able to examine the claimant in 1995 and 1998, I find his opinion entitled to even greater weight as he enjoyed the opportunity to see the claimant over a significant span of time. *See Adkins v. Director, OWCP*, 958 F.2d 49 (4th Cir. 1992)(holding that "a comparison of medical reports and tests over a long period of time may conceivably provide a physician with a better perspective than the pioneer physician").

Similarly, I find the opinions of Drs. Joyce and Simpao well reasoned and documented, and I grant them substantial probative value. Each opinion reaches clear conclusions with explicit explanations that rely upon documented medical findings, and both opinions demonstrate a familiarity with the claimant's coal mine employment history (including its concomitant physical requirements), the claimant's physical condition, and the interrelatedness between those two factors.

I also find Dr. Powell's opinion to be well reasoned and well documented, and I credit it with probative weight. The doctor's credentials are an additional factor that lead me to assign more weight to his medical conclusions.

I do not afford Dr. Broudy's opinion probative weight on the etiology of the claimant's impairment as he failed to diagnose pneumoconiosis and, in turn, did not provide any separate, additional reason under which to credit his opinion. In *Toler v. Eastern Assoc. Coal Co.*, 43
F.3d 109 (4th Cir. 1995), the court held that, where the administrative law judge determines that a miner suffers from pneumoconiosis or is totally disabled or both, then a medical opinion wherein the miner is determined not to suffer from pneumoconiosis or is not totally disabled "can carry little weight" in assessing the etiology of the miner's total disability "unless the ALJ can and does identify specific and persuasive reasons for concluding that the doctor's judgment on the question of disability causation does not rest upon her disagreement with the ALJ's finding as to either or both of the predicates (pneumoconiosis and total disability) in the causal chain." *See also Tussey v. Island Creek Coal Co.*, 982 F.2d 1036, 17 B.L.R. 2-16 (6th Cir. 1993).

On balance, I find the weight of the evidence demonstrates that Claimant's impairment was caused, in part, by pneumoconiosis and the claimant's previous coal mine employment. Only Dr. Powell's opinion contradicts this conclusion *and* demands probative weight, as Dr. Powell points to the claimant's smoking history as the sole cause of his impairment. Dr. Powell's opinion is not without question, however. Dr. Houser testified in his deposition that the claimant's "low level [of] exposure" would not have caused the degree of regression in Claimant's pulmonary function.

Thus, the medical evidence of record, to which I grant substantial probative value, suggests two reasons for the claimant's impairment: tobacco abuse and pneumoconiosis. All four opinions acknowledge the factors, but only Dr. Powell's opinion attributes, solely, the claimant's impairment to tobacco abuse. As the remaining opinions adequately address Claimant's tobacco abuse and, more importantly, adequately argue that pneumoconiosis is a contributing factor to the impairment, I find the weight of the opinions of Drs. Joyce, House, and Simpao carry the claimant's burden of proof.

Conclusion

In sum, I find that claimant is totally disabled due to pneumoconiosis. As the claimant has previously satisfied the regulatory standards of proof for demonstrating pneumoconiosis and total disability, Glenn O. Morgan's demonstration, by a preponderance of the evidence, that his coal mine employment contributed to his impairment, entitles him to benefits.

Onset of Disability

Once a claimant proves entitlement to benefits, benefits should be paid commencing at the date of onset of total disability due to pneumoconiosis. 20 C.F.R. § 725.503. To establish date of onset of disability, the miner must demonstrate the date of total disability due to pneumoconiosis. *Edmiston v. F & R Coal Co*, 14 B.L.R. 1-65, 1-69 (1990). The miner cannot receive benefits for any month during which he or she was not totally disabled. *Lykins v. Director, OWCP*, 12 B.L.R. 1-181, 1-183 (1989). The claimant bears the burden of proof in establishing the date of onset of total disability. *See, e.g., Johnson v. Director, OWCP*, 1 B.L.R. 1-600 (1978). In determining the onset date, the administrative law judge must consider all relevant evidence of record and assess the credibility of that evidence. *Lykins*, 12 B.L.R. at 1-183.

The date of the first medical evidence of record indicating total disability does not necessarily establish the onset date. Such evidence only indicates that the miner became totally disabled at some point prior to when the medical tests revealed claimant's disability. *Tobrey v. Director, OWCP*, 7 B.L.R. 1-407, 1-409 (1984); *Hall v. Consolidation Coal Co.*, 6 B.L.R. 1-1306, 1-1310 (1984). As x-ray readings are probative only to the existence of pneumoconiosis and not to the extent of disability, *Short v. Westmoreland Coal Co.*, 10 B.L.R. 1-127, 1-129 n.4 (1987), x-ray readings alone are insufficient to prove onset of disability. However, x-rays may be used in conjunction with other medical evidence to determine when pneumoconiosis has progressed to a totally disabling stage. *Gottke*, 6 B.L.R. at 1-1302.

The Claimant does not explicitly advance a particular date as the date of onset of his total disability due to pneumoconiosis. Furthermore, the relevant medical data does not demonstrate a

date of onset nor does it provide enough evidence to approximate a date of onset. Accordingly, I find that the date of onset is the date upon which the claim was filed, April 1998. *See Johnson*, 1 B.L.R. at 1-602 ("Clearly, the date of filing is the preferred date of onset unless evidence to the contrary is presented.").

Attorney's Fee

Claimant's counsel has thirty days to submit an application for an attorney's fee. The application shall be prepared in strict accordance with 20 C.F.R. §§ 725.365 and 725.366. The application must be served on all parties, including the claimant, and proof of service must be filed with the application. The parties are allowed thirty days following service of the application to file objections to the fee application.

ORDER

The employer, Lodestar Energy, Inc., is hereby ORDERED to pay the following:

1. To claimant, Glenn O. Morgan, all benefits to which he is entitled under the Act, augmented by his reason of his two dependents, commencing April 28, 1998 until May 1999; and, thereafter, all benefits to which he is entitled under the Act, augmented by his reason of his one dependent;

2. To claimant, all medical and hospitalization benefits to which he is entitled, commencing April 28, 1998;

3. To the Secretary of Labor, reimbursement for any payment the Secretary has made to claimant under the Act. The employer may reduce such amounts, as appropriate, from the amounts the employer is ordered to pay under paragraph 1 above; and,

4. To the Secretary of Labor or to claimant, as appropriate, interest computed in accordance with the provisions of the Act or regulations.

A
JOSEPH E. KANE
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: Pursuant to 20 C.F.R. § 725.481, any party dissatisfied with this Decision and Order may appeal it to the Benefits Review Board within thirty days from the date of this decision by filing a Notice of Appeal with the Benefits Review Board at P.O. Box 37601, Washington D.C. 20013-7601. This decision shall be final thirty days after

the filing of this decision with the district director unless appeal proceedings are instituted. 20 C.F.R. § 725.479. A copy of this Notice of Appeal must also be served on Donald S. Shire, Associate Solicitor for Black Lung Benefits, 200 Constitution Avenue, N.W., Room N-2605, Washington, D.C. 20210.